THE HON'BLE SRI JUSTICE N.R.L.NAGESWARA RAO

APPEAL SUIT NO.32 OF 1995

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JUDGMENT:-

The defendant in O.S.No.288 of 1983 on the file of the Court of 1st Additional Senior Civil Judge, Visakhapatnam, is the appellant herein.

The suit was filed for recovery of a sum of Rs.16,027-60 paise which is being the principal sum of Rs.11,456-89 piase with interest thereon. The plaintiff is said to be the agent of the defendant and some of the goods, which were supplied, were found to be defective and they have been returned. By 31.12.1980 a sum of Rs.18,201.52 ps was due and the defendant has not paid the same and the legal notice was given on 21.01.1981. After receipt of the same, the defendant has sent cheques for a sum of Rs.6,744/- and they were encashed and prior to the encashment, a letter was written on 19.10.1981 that the amounts were encashed under protest. Therefore, the suit was filed for recovery of the said amount.

The defendant has raised several pleas and the substantial plea raised by the defendant is that the goods were not returned within the stipulated time and further the payment under the cheques made on 17.02.1981 is in full satisfaction of the claim and consequently the defendant is not liable to pay the said amount. It was further pleaded that all the items, which were returned as defective goods, were not accepted and consequently the defendant is not liable to pay the amount. A plea of limitation was also raised before the court.

The Court below has accepted the claim of the plaintiff and decreed the suit for the principal amount without any past or subsequent interest from the date of suit. Aggrieved by the said judgment, the present Appeal is filed.

Now the points that arise for consideration are:-

(1) Whether the defendant is not liable to pay the said amount granted by the court below; and

(2) Whether there was final settlement as claimed by

the appellant.

POINTS:-

There is no dispute about the fact that the plaintiff is appointed as a dealer and under Exs.A.1 to A.18 books of entry maintained by the plaintiff clearly goes to show as to what are the stocks that were received and as to what are the goods that were returned. In fact, the invoices and also credit notes issued by the defendant were also filed. The suit was filed on 29.12.1982. The claim of the plaintiff is that the suit amount is due by 31.12.1980. Any claim within three (3) years from 29.12.1982 i.e., after 29.12.1979 is within time. Most of the correspondence between the parties relates to the year 1980-1981 and in fact the written statement filed by the defendant clearly goes to show that the defective goods were returned to the defendant and whenever defective goods were returned, naturally, it has got independent time. The defendant is not clear as to which of the item is barred by time. The written statement of the defendant goes to show that though the defective goods, which were claimed by the plaintiff, were returned, only some of them were accepted by the Head Office, Bangalore and some of them were not accepted. The lower court found that there is no proof that the defective goods which were returned to the plaintiff and which were again not accepted by the defendant were sent to the plaintiff. In the absence of such evidence, it can only be inferred that the goods sent by the plaintiff have been totally received and retained by the defendant. The contention of the defendant that a period of 60 days is fixed for return of the defective goods cannot be accepted in this case since when the goods were returned to the defendant, they were not rejected on the ground that they were not sent within the period of 60 days as agreed between the parties. Therefore, in view of the above circumstances, there cannot be any tenable contest on the part of the defendant. In fact, the defendant is not coming forward with any specific sum as being due towards the defective goods. The amount sent on 17.02.1981 is supposed to represent the security deposit and not the value of the defective goods. Therefore, in view of the above circumstances, the defendant cannot plead that the amount was paid

towards the value of the defective goods. In fact, the sending of the cheques on 17.02.1981 is only an unilateral act of the defendant and merely the defendant in his notice claimed that it is in full settlement of the claim, it does not bind the plaintiff unless and until he has committed in writing that as a settlement he has received the said amount. Merely because, notice was given long after the receipt of the cheques, it does not mean it is an acquiescence of the claim of the defendant. The mere fact that the cheques were kept pending can only be taken as a circumstance where the plaintiff was corresponding with the defendant for the entire amount and there is no reason as to why they should be kept pending for such a long time. Therefore, the circumstance does not warrant an inference that the plaintiff has acquiescence the claim of the defendant that it was a full settlement. The material available on record does not support the claim of the defendant and I find no valid reasons to interfere with the judgment of the Court below. There are no merits in the appeal and the same is liable to be dismissed.

Accordingly, the Appeal Suit is dismissed. No costs.

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N.R.L. *NĀGESWARA RĀO*,J

06-09-2012
TSNR